

APPENDIX F
CHANGE ORDER

1. DEFINITIONS

All terms used in this Appendix shall have the definitions ascribed to them in Appendix A (*Definitions*).

2. CHANGES REQUESTED BY THE STATE

2.1. Discretion of the State

Without derogating from the generality of the provisions of Section 10.2 (*Management of the Project by the State*) of the Concession Agreement, the State reserves the right to introduce any Changes to the Project, at any time during the Contract Period, including Changes to (i) the Design of the Project (including the Project's Design Documents, the specifications of the Project etc.); or (ii) to the Construction, Operation or Maintenance of the Project.

Subject to the provisions of Section 2.18 (*No Obligation to Execute Change Order*), the Concessionaire shall be obligated to carry out any Instruction of the State as provided in this Appendix.

If the State desires to initiate a Change pursuant to the provisions of this Appendix, or to evaluate whether to initiate a Change, then the Implementing Authority may, at its sole discretion, either issue a Change Order to the Concessionaire and the provisions of Section 2.6 (*Change Order*) shall apply; or issue to the Concessionaire a Request for Information and the provisions of Section 2.2 (*Request for Information*) shall apply.

2.2. Request for Information

In the event the Implementing Authority will issue a Request for Information, such Request for Information shall specify the requested Change and shall detail the information required from the Concessionaire. The information required from the Concessionaire, may include the following details, or any applicable part thereof:

- 2.2.1.1. information regarding the Work to be carried out in connection with the requested Change;
- 2.2.1.2. information regarding the implications of the requested Change on the Basic Schedule;
- 2.2.1.3. information regarding the implications of the requested Change on the performance and on the availability of the Project, including transfer to the State at the end of the Concession Period;

- 2.2.1.4. in the event that the requested information entails design works, the Implementing Authority shall determine the estimated costs associated with the preparation of the Concessionaire's Response;
- 2.2.1.5. the estimated costs of the proposed Change and any estimated savings entailed with the proposed Change.

("Request for Information").

2.3. Concessionaire's Response

The Concessionaire shall provide such information as requested by the Implementing Authority within twenty one (21) days following receipt of the Request for Information.

Notwithstanding the above: (i) in the event that the Request for Information entails the preparation of Preliminary Design, the Concessionaire shall provide the requested information within thirty (30) days following receipt of the Request for Information; (ii) in the event that the Request for Information included a requirement for Detailed Design, the Concessionaire shall provide, within fourteen (14) days following receipt of the Request for Information, any necessary information, as requested by the Implementing Authority, in order to determine a schedule for the submission of the Concessionaire's Response.

The Concessionaire shall be obliged to submit the Concessionaire's Response to the Implementing Authority within the time schedule set forth by the Implementing Authority, following receipt of the requested information, or following the elapse of the fourteen (14) days, set forth for its submission to the Implementing Authority.

The Concessionaire's Response shall include:

- 2.3.1.1. Detailed responses to the Request for Information , including an implementation plan to the extent of detail required by the Implementing Authority (preliminary or detailed) in the Request for Information;
- 2.3.1.2. The schedule for implementation of the proposed Change;
- 2.3.1.3. In the event that the requested Change relates to the Construction Phase (including the Partial Operation and Maintenance Phase) all the effects that the Change shall have on the Project, including any changes (costs and savings) to the construction costs and any expected implications the proposed Change may entail with respect to the contractual requirements of the Operation and Maintenance of the Project, including the Transfer of the Project to the State at the end of the Concession Period;
- 2.3.1.4. In the event that the requested Change relates to the Commercial Operation Phase, all the effects that the Change shall have on the Project, including any Works required in order to implement the Change and any changes (costs and savings) during the Commercial Operation Phase;

- 2.3.1.5. All the effects that the Change shall have on the Basic Schedule, including any delay or preceding of the Partial Operation and Maintenance of Sections of the Highway or of the Commercial Operation Phase or both phases;
- 2.3.1.6. All the effects that the Change shall have on the Availability of the Highway;
- 2.3.1.7. All the effects that the Change shall have on the environment, on the level of service, or on the compliance with any of the requirements under the Contract Documents;
- 2.3.1.8. Detailed bills of quantities prepared according to best engineering practice;
- 2.3.1.9. the estimated costs and savings of the proposed Change, based on the detailed bill of quantities shall be prepared by the Concessionaire on the basis of the prices indicated in the Price Index;
- 2.3.1.10. in the event that any item, included in the bill of quantities, does not exist in the Price Index, the cost of such item shall be based on a price proposal received from a third party, reflecting the fair market value of such item;

The Concessionaire shall use its best efforts to minimize the costs of the Change Order, and any negative effects it may have on the Project, including its effects on the Basic Schedule, and to maximize the savings of the Change Order, and increase any positive effects on the Project, including its effects on the Basic Schedule.

2.4. Consultation

Within twenty one (21) days following receipt of the Concessionaire's response to the Request for Information, the Concessionaire and the Implementing Authority shall discuss the effects of the requested Change, the estimated detailed bills of quantities or the estimated cost increase or decrease and the impact of the Change on the Project, on the specifications of the Project, on the Schedule and any other relevant issue.

The Concessionaire and the Implementing Authority shall use their best efforts to agree upon the effects on the time schedule (to the extent there are any), and upon the compensation due to the Concessionaire, if any, for the implementation of the Change Order initiated by the Implementing Authority pursuant to the provisions of this Appendix F (*Change Order*).

2.5. The Implementing Authority's Response to the Concessionaire's Response

Following such consultation, the Implementing Authority shall examine the Concessionaire's Response, and shall be entitled to approve the Concessionaire's Response (or as amended and agreed during the consultation), to waive the Change, to request the Concessionaire to correct its response (in whole or in part), or to provide additional information. The Implementing Authority shall also be entitled to correct the Request for Information (in whole or in part). The provisions of this section 2 (*Changes Requested by the State*) shall apply to the amended Request for Information.

2.6. Change Order

Upon its decision in accordance with Section 2.1 (*Discretion of the State*); during any stage of the above mentioned consultation process or following the above mentioned consultation, the Implementing Authority may, at its sole discretion, issue a Change Order. The Concessionaire will execute the Change Order, in accordance with the provisions thereof.

A Change Order will detail the following:

- a. the Change introduced;
- b. the Work to be carried out in connection with the Change;
- c. In the event the Concessionaire and the Implementing Authority agreed upon the effects of the Change on the Project the Implementing Authority will issue a Change Order reflecting the agreed effects in the form of a "fixed price", "lump sum" Change Order, or as otherwise agreed. In the event the Implementing Authority issued the Change Order without issuing a Request for Information, or in any other event that the Parties did not achieve a prior agreement with respect to the effects of the Change on the Project, the Implementing Authority shall determine the cost and savings resulting from the Change, according to its professional opinion;
- d. The milestones for payment of the compensation to the Concessionaire (if any), during the Construction Phase and during the Commercial Operation Phase, as applicable;
- e. The implications of the Change on the Basic Schedule; and
- f. Any additional details, relevant to the Change.

("Change Order")

In the event that the Implementing Authority waived the Change, in accordance with the provisions of section 2.5 (*The Implementing Authority's Response to the Concessionaire's Response*) above, the Concessionaire shall be entitled to the costs, as determined in advance by the Implementing Authority according to the provisions of section 2.2(d) above, for the preparation of the Concessionaire' Response. For the avoidance of doubt, the State shall be entitled to execute, in any event, including in the event the Change was waived in accordance with the provisions of section 2.5 (*The Implementing Authority's Response to the Concessionaire's Response*) above, through a Third Party.

2.7. Continuance of Obligations

For the removal of doubt, it is hereby clarified that other than if explicitly approved by the Implementing Authority within a Change Order, the issuance of a Change Order shall not release the Concessionaire from any of its obligations or responsibilities under this Concession Agreement.

Notwithstanding the aforesaid, in the event that the Concessionaire is of the opinion that the execution of a Change Order would have a material adverse effect on the safety of the Project, it may issue a notice to such effect to the Implementing Authority. The Concessionaire shall attach to its notice an opinion of a safety engineer, confirming that in the opinion of the safety engineer the Change will have a material adverse effect on the safety of the Project. Such

opinion shall set out in detail which measures will be required in order for the execution of the Change to be safe. The Implementing Authority shall provide the Concessionaire with an Instruction with respect to the execution of the Change or may amend the Change Order, considering the aforesaid notice and the opinion attached thereto. Following the Implementing Authority's notice the Concessionaire shall execute the Change Order as issued by the Implementing Authority, according to its Instruction or to the amended Change Order.

2.8. Cooperation between the Parties and Obligations of the Concessionaire

The Concessionaire and the Implementing Authority shall use their best efforts to try and resolve any differences between them concerning a Change Order, should any differences arise. However, in any event and notwithstanding the foregoing, any differences shall remain unresolved, the Change Order shall be deemed as an Instruction of the State and the provisions of Section 16.1.4 of the Concession Agreement shall apply with respect thereto.

2.9. Change Order; Compensation

- a. In the event that a Change Order is issued by the State in accordance with the provisions of Sections 2.1 (*Discretion of the State*) and 2.6 (*Change Order*), and unless specifically agreed otherwise, the compensation to the Concessionaire will be made on a "fixed price" "lump sum" basis. The compensation determination in consideration for the Change Order shall be final and conclusive. The fixed price, included in a Change Order, shall not be subject to any further changes, negotiations or updates.
- b. The aforementioned compensation will be agreed by the Parties, or determined by the Implementing Authority, based upon the detailed bills of quantities on the basis of the Price Index or upon direct costs that the Concessionaire is expected to incur as a direct result of implementing the Change Order. It is hereby clarified that the Compensation for a Change Order shall be determined prior to notice to proceed with the implementation of the Change Order.
- c. For the removal of doubt, the aforesaid shall not derogate from the Concessionaire's right to contest the compensation determined by the Implementing Authority within a Change Order before the Independent Expert in accordance with the provisions set forth in Appendix K (*Dispute Resolution*).
- d. Without derogating from the generality of the foregoing, in determining the amount of compensation, the Independent Expert will act in accordance with the provisions of this Appendix F (*Change Order*).

2.10. Additional Costs

In the event that due to the implementation of any Change Order the Concessionaire is expected to incur additional Capital Expenditure, the following shall apply:

2.10.1. Additional Capital Expenditure

- a. The Concessionaire shall be entitled to the costs of such additional Capital Expenditure.

- b. The cost of the additional Capital Expenditure shall be determined according to price items included in the most updated "Bridging and Pavement Works" Price Index published by Israel Routes – the National Company for Transportation Infrastructure Ltd (denoted in Hebrew as: "מחירון לעבודות סלילה וגישור") (the "**Price Index**") with a discount factor of 20% from the relevant quoted price.
- c. In the event that a particular item's price is not included in the most updated Price Index, the relevant cost for such item shall be determined according to the most updated "Maagar Mashulav" price index (denoted in Hebrew as "מחירון המאגר" "המשולב") with a discount factor of 20% of the relevant quoted price. In the event that the particular item's price is not included in the above price indices, then the relevant cost for such item shall be assessed based on prices of similar components, according to the Price Index and the Concessionaire shall be entitled to the assessed costs, with a discount factor of 20% of the relevant quoted price.
- d. In the event that such item's price cannot be assessed according to the sub-sections b. and c. above, the Concessionaire will furnish the Implementing Authority with any price quotes required with respect to the direct costs of the item obtained from a third party, reflecting the fair market value of such item. The Implementing Authority may present additional price quotes regarding such items. The Concessionaire shall be entitled to the costs according to the lowest price quotes, supplied either by the Concessionaire, or by the Implementing Authority.

2.10.2. Overhead Costs

2.10.2.1. In addition to the above mentioned costs, in accordance to the subsections b. to d. of Section 2.10.1 (*Additional Capital Expenditure*), the Concessionaire shall be entitled to overhead costs of twelve percent (12%) for the Change Order (the "**Overhead Costs**"). The Overhead Costs shall include all additional costs, not included in the bills of quantities, such as: management costs, surveys costs, inspection costs and any other costs associated with the implementation of the Change including investigation of the site, planning, quality inspection, testing, site supervision, financing, profit and any other costs.

2.10.2.2. Notwithstanding the foregoing, in the event that the Change Order works as instructed by the Implementing Authority include design works, measurement or laboratory tests, then in addition to the Overhead Costs set forth under Section 2.10.2.1 above, the Concessionaire shall be entitled to the following:

- a. For design works – additional Overhead Costs in the amount of 3% of the additional Capital Expenditure determined in accordance with Section 2.10.1 above;
- b. For laboratory tests: additional Overhead Costs in the amount of 1.5% of the additional Capital

Expenditure determined in accordance with Section 2.10.1 above;

- c. For measurements: additional Overhead Costs in the amount of 0.5% of the additional Capital Expenditure determined in accordance with Section 2.10.1 above;

2.10.2.3. It is hereby explicitly clarified that:

- a. In no event any of the above Overhead Costs shall be included as a separate item in the bills of quantities to be priced for the purpose of determining the additional Capital Expenditure.
- b. In the event that any price item included in the Price Index or in a price quote includes overhead costs or subcontractor's profit, then for the purpose of determining the direct cost of the price item such overhead costs shall be deducted, and only the Overhead Costs defined in this subsection 2.10.2 (Overhead Costs) shall apply.
- c. In no event will the Concessionaire be entitled to double compensation for any costs included in the Overhead Costs defined herein.

2.11. Additional Operating Costs

2.11.1 In the event that due to the implementation of any Change Order: (i) the Concessionaire is entitled to compensation in accordance with the provisions of section 2.10 (*Additional Costs*); and (ii) the Operation and Maintenance of the implemented Change is expected to entail additional Operating Costs for the Concessionaire, then the Concessionaire will be entitled for such additional Operating Costs in an annual amount of zero point seven percent (0.7%) of the costs of the additional Capital Expenditure, determined in accordance with the provisions of Section 2.10.1 (*Additional Capital Expenditure*) as compensation for the additional Operating Costs expected to be borne by the Concessionaire as a result of the implementation of the Change Order, as of the Permit to Operate and throughout the remainder of the Contract Period.

(iii) Without derogating from the foregoing, in the event that such additional Operating Costs relate to the Partial operation and Maintenance of the Existing Road Sections during the Construction Phase, then in addition to the compensation under Section 2.11.1(ii), the Concessionaire shall be entitled for compensation for additional financing costs incurred thereby during the Construction Phase as a result of the implementation of the Change Order, based on Short term Nominal NIS Interest Rate plus two and a half percent (2.5%). Such compensation will be added by the Implementing Authority to the compensation payments under Section 2.11.1(ii) above.

(iv) The compensation under this Section 2.11.1 shall be the sole remedy of the Concessionaire for any additional Operating and Maintenance works and costs entailed with the execution of the Change Order.

2.11.2 In the event that the implementation of a Change Order does not entail any Capital Expenditure, but the Concessionaire shall demonstrate that it entails additional Operating Costs, the Concessionaire will be compensated for such additional Operating Costs, as shall be determined in the Change Order.

2.12. Compensation; Terms of the Payment

- a. In the event that the amount of compensation payable to the Concessionaire, for any additional Capital Expenditure, as agreed by the Parties or as determined by the Implementing Authority (or following the final resolution of a dispute by the Independent Expert or the Arbitrators), exceeds ten million NIS (10,000,000 NIS), the following will apply:
 - (i) The Concessionaire will be entitled to 10% of such costs upon the issuance of the Change Order by the Implementing Authority as an advance payment;
 - (ii) 80% of such costs shall be paid to the Concessionaire in accordance with milestones specified in the Change Order, subject to progress of the Works; and
 - (iii) The Concessionaire shall be entitled to the final 10% of such costs upon the issuance of a completion certificate with respect to the implementation of the Change Order (a “**Change Order Completion Certificate**”) by the Implementing Authority;
 - (iv) All such payments shall be paid to the Concessionaire in accordance with the terms of payment determined in Appendix D2 (*Payment Procedure*);
- b. In the event that the amount of compensation payable to the Concessionaire, for any additional Capital Expenditure, as agreed by the Parties or as determined by the Implementing Authority (or following the final resolution of a dispute by the Independent Expert or the Arbitrators) does not exceed ten million NIS (10,000,000 NIS), the following will apply:
 - (i) The Concessionaire shall be entitled to 90% of such costs in accordance with milestones specified in the Change Order, subject to progress of the Works; and
 - (ii) The Concessionaire shall be entitled to the final 10% of such costs upon the issuance the Change Order Completion Certificate by the Implementing Authority.
- c. The compensation for the additional Operating Costs, as determined in the Change Order, will be added by the Implementing Authority to the Actual State Periodic Payments, due to the Concessionaire.

2.13. Savings

In determining the compensation under Sections 2.10.1 (*Additional Capital Expenditure*) and 2.11 (*Additional Operation and Maintenance Costs*) above, the Implementing Authority will

take into account any savings in Capital Expenditure, Operating Costs, and financing costs, resulting from the Change Order, in accordance with the provisions of Section 2.14 (*Reduction from the Project*).

2.14. Reduction from the Project

For the purposes of Section 2.9 (*Change Order; Compensation*), and in the event that any Change Order entails savings, deletion, reduction or derogation from the Project, the following will apply:

2.14.1. Savings in Capital Expenditure

2.14.1.1. In the event that due to the implementation of any Change Order the Concessionaire is expected to gain any saving in Capital Expenditure, the Implementing Authority shall be entitled to benefit from the relevant Capital Expenditure savings. Such costs will be determined in accordance with the provisions of sections 2.10.1 (*Additional Capital Expenditure*) - 2.10.2 (*Overhead Costs*) above.

2.14.1.2. In the event that a Change Order shall entail both additional Capital Expenditure Costs and savings in Capital Expenditure the savings gained as a result from the Change Order shall be deducted from the Compensation due to the Concessionaire in consideration for the implementation of the Change Order.

2.14.1.3. In the event that following such deduction the Change Order is expected to result in net saving in the Concessionaire's Capital Expenditure then the Implementing Authority shall be entitled to the net savings in the Capital Expenditure.

2.14.2. Savings in Operation and Maintenance Costs

2.14.2.1. In the event that due to the implementation of a Change Order entailing changes in the Concessionaire's Capital Expenditure, the Concessionaire is expected to a net saving in the Operating Costs related to such changes in the Capital Expenditure or related to the Operation and Maintenance of such Change Order, the Implementing Authority will be entitled to benefit from the savings in the Operating Costs. Such savings will be determined in accordance with the provisions of section 2.11.1 above.

2.14.2.2. In the event that the implementation of a Change Order does not entail any change in the Capital Expenditure of the Concessionaire, but entails savings in Operating Costs, the Implementing Authority will be entitled to the benefit of such saving in the Operating Costs, as shall be determined in the Change Order.

2.14.3. Savings; Terms of the Payment

In the event that the net savings in Capital Expenditure or in the Operating Costs of the Concessionaire for any Change Order is expected to occur during the Construction Phase, the net savings due to the benefit of the Implementing Authority will be attributed to the last Construction Grant payment and shall be deducted there from.

The Capital Expenditure or Operating Costs net savings, determined in the Change Order to occur during the Construction Phase, will be linked to the Construction Grant basket of indices, for the period commencing on the date of issuance of the Change Order until the date of payment of the Construction Grant payment the savings was deducted from.

In the event that such net savings in Capital Expenditure or in the Operating Costs is expected to occur during the Commercial Operation Phase, the net savings will be deducted from each Actual State Periodic Payment, for the remaining duration of the Contract Period.

The Capital Expenditure or Operating Costs net savings, determined in the Change Order to occur during the Commercial Operation Phase, will be linked to the basket of indices applicable to the applicable Actual State Periodic Payment the savings was deducted from.

2.14.4. Savings in Financing Costs

2.14.4.1. In the event that the implementation of a Change Order is expected to yield savings in financing costs during the Construction Phase, the savings will be calculated based on Short Term Nominal Interest Rate, with an addition of two and a half percent (2.5%), for the period commencing upon the Change Order implementation commencement date, based on the approved schedule for its performance, and ending at the payment date of the Construction Grant payment the Change Order was attributed to.

2.14.4.2. In the event that the implementation of a Change Order is expected to yield savings in financing costs during the Commercial Operation Phase, the savings will be deducted from each Actual State Periodic Payment, for the remaining duration of the Contract Period, based on the Long Term NIS Nominal Interest Rate, with an addition of two and a half percent (2.5%).

2.15. Delay in Construction Completion

If, as a result of the implementation of any Change Order issued by the State, Construction Completion shall be delayed (for the purpose of this Section, a "**Delay**"), then, in addition to compensation under Section 2.9 (*Change Order; Compensation*) the provisions of Section 7.8.1 (*Interruption Following the Date of Issuance of Notice to Proceed and prior to the Date of Issuance of Permit to Operate*) shall apply.

2.16. Earlier Construction Completion

If, as a result of the issuance of a Change Order by the State, Construction Completion (or the completion of any contractual milestone, or both, as applicable) may be achieved at an earlier date, the Basic Schedule will be modified to reflect such achievement. Under such circumstances the Concessionaire shall not be entitled during the resulting additional time added to the Commercial Operation Phase (or the Partial Operation and Maintenance Phase of Sections of the Highway, or both, as applicable), to any Actual State Periodic Payments and the Toll Revenue Guarantee shall not apply. The Concessionaire shall be entitled to the actual Toll Revenues collected during such additional Commercial Operation or Partial Operation Period, as applicable.

The actual Toll Revenues shall be the Concessionaire's sole remedy for any additional Operating and Maintenance works and costs entailed with the early commencement of the Commercial Operation Phase or Partial Operation and Maintenance Phase – Sections of the Highway, due to the execution of the Change Order.

2.17. General Provisions Relating to Compensation Payable Following the Issuance of a Change Order

2.17.1. Exclusions

Notwithstanding any other provision of this Concession Agreement or in the other Contract Documents, and regardless of any Change Order issued by the Implementing Authority, the Concessionaire shall not be entitled to any remedy, compensation or extension of the Basic Schedule in respect to Works which the Independent Expert determined:

- (a) as required in order for the Project to be constructed or operated in accordance with the provisions of this Concession Agreement or in order to comply with the Contract Documents or specifications,
- (b) as required in order to remedy a breach, act, omission or other failure of the Concessionaire to comply with the provisions of this Concession Agreement or with the Contract Documents or specifications.
- (c) as required in order to comply with the instructions and provisions of the Accompanying Team; unless the instruction constitutes a material addition to the contents of the Project, such as the construction of an additional tunnel or an additional bridge (which are not included in the scope of the Project or the statutory National Master Plans applicable to Sections 7 and 3 of the Highway). With respect to instructions of the Accompanying Team which are determined by the Independent Expert to constitute a material addition to the contents of the Project, the Concessionaire shall be entitled to compensation amounting to eighty five percent (85%) of the total costs associated with the implementation of such Change, in accordance with the provisions of this Appendix F (*Change Order*).

- (d) that are otherwise compensated for in the Concession Agreement or in the Contract Documents due to events specifically provided for in this Concession Agreement, including actual ground conditions found at the site and all the events specified in Appendices D (*Adjustment of the Payments*), D1 (*Toll Revenue Guarantee*) and D2 (*Payment Procedure*), instructions of the Relevant Authorities in accordance with the Toll Road Law, instruction of the Implementing Authority to make all necessary arrangements to operate the third lane of the Highway, and any other issue specifically regulated in this Concession Agreement;
- (e) that are excluded from the definition of the term "Change" as such term is defined in Appendix A (*Definitions*) of the Concession Agreement.
- (f) that are otherwise excluded in the Concession Agreement or the Contract Documents from being considered as a "Change" or as entitling the Concessionaire to any compensation, including, but not limited to, adaptation of the Highway to traffic at full capacity, as provided in Volume 3 (*Introduction to Engineering*).

2.17.2 Duty to Mitigate.

The provisions of Sections 2.9 (*Change Order; Compensation*) through 2.16 (*Earlier Construction Completion*) above shall apply subject to the Concessionaire's duty to mitigate (and cause any other person on its behalf to mitigate) any delays and any increase of costs and to maximize any benefits resulting from the Change Order.

2.17.3 No Double Compensation.

The Concessionaire shall not be entitled to double compensation for components which are included under any Sections in this Appendix F (*Change Order*), and anywhere else in the Concession Agreement or Contract Documents and the provisions of Section 34.11.3 (*No Double Compensation*) of the Concession Agreement shall apply.

2.18. No Obligation to Execute Change Order

2.18.1 No Obligation to Execute Change Order

In the event that the Net Amount of Compensation for Change Orders requested by the State (excluding such Change Orders resulting in net Savings and Change Orders resulting in reductions from the Project), as determined by the State in the Change Orders (or as otherwise determined by the Independent Expert following the final resolution of a dispute with respect to any Change Order), exceeds an amount of two hundred and fifty million NIS (250,000,000 NIS) during the Construction Phase, or an amount of one hundred and fifty million NIS (150,000,000 NIS) during the Commercial Operation Phase, the Concessionaire shall not be obligated to execute the Change Order issued by the State pursuant to Section 2.4 (*Change Order*).

For the Purpose of this section, "**The Net Amount of Compensation**" shall mean the total amount of the additional costs derived from Change Orders, which have been (or shall be) carried out during the applicable Phase, subtracted by the total amount of net savings due to Change Orders, which have been (or shall be) carried out during the applicable Phase.

2.18.2 Exclusions

The amount specified under section 2.18.1 (*No Obligation to Execute Change Order*) will not include amounts payable to the Concessionaire following the execution of a Change Order issued under any of the following circumstances or pursuant to the provisions of the following Sections of the Concession Agreement:

- a. Revision of Toll Tariffs in accordance with the provisions of Section 13.3 (*Revisions of the Tolls*) of the Concession Agreement and Section 3.1.4 of Appendix E (*Toll Tariffs*).
- b. Instruction of the State to refrain from adjusting the Tolls, in accordance with the provisions of Section 2.1.5 of Appendix E (*Toll Tariffs*).
- c. Section 18 (*Discriminatory Action*).
- d. Handling of Utilities in accordance with the provisions of Volume 6 (*Utilities*) which the Implementing Authority instructed the Concessionaire to perform instead of the State or in accordance with the provisions of Section 7.9.2 (*Unknown Infrastructures*).
- e. Modifications, adaptations and Widening Works required to enable traffic in full configuration of the Project lanes, roadways, ramps, tunnels or any other components as detailed in Volume 3 (*Introduction to Engineering*) with respect to Section 3 of the Highway.
- f. Construction of the “Ibtin” interchange.
- g. Changes required in any computerized system, software or hardware, which are required under any of the Contract Documents as part of the Concessionaire's duty to maintain its systems up to date and in compliance with the market practice.
- h. Changes resulting from a Request for Change Order, initiated by the Concessionaire in accordance with the provisions of section 4.1 (*Request for Change Order*).

3. GENERAL PROVISIONS RELATING TO CHANGE ORDERS

- 3.1. A proposed Change Order, whether in accordance with Section 2 (*Changes Requested by the State*), or in accordance with Section 4 (*Changes Requested by the Concessionaire*), shall be subject to the Approval of the Implementing Authority, prior to implementation. For the avoidance of doubt, it is hereby clarified that the Approval of the Implementing Authority shall not replace, derogate, or eliminate the need for the inspection and Approval, of the proposed Change Order, by any Relevant Authority, in accordance with all applicable Laws. It is the Concessionaire's responsibility to obtain all Approvals from the Relevant Authorities.
- 3.2. The State may choose to implement Change Orders, whether in accordance with Section 2 (*Changes Requested by the State*), or in accordance with Section 44 (*Changes Requested by the Concessionaire*), and the provisions of the Concession Agreement shall apply upon such Change Orders, as an integral part of the Project. The Concessionaire is fully responsible for the implementation plans of the Change Order.

3.3. Changes to the Project by a Third Party

- 3.3.1. Without derogating from the any of the provisions in this Appendix F (*Change Order*) the Implementing Authority reserves the right to execute Changes to the Project through a Third Party. The Concessionaire will have no right to contest such decision made by the Implementing Authority.
- 3.3.2. In the event that Changes to the Project shall be implemented by a Third Party, the Implementing Authority reserves the right to request the Concessionaire to supervise and manage such Works, and the Concessionaire will be responsible for these Changes to the Project. In the event that the Concessionaire will be instructed to supervise and manage Changes to the Project, executed by a third party, the Concessionaire's compensation for all its overhead costs and for any other costs associated with the supervision and management shall be three percent (3%) of the amount of the Change, or in the event the Change is only partially executed under the supervision and management of the Concessionaire three percent (3%) of any part of the Change, which is executed under the Concessionaire's supervision and management. The compensation to the Concessionaire for such supervision and management costs will be paid according to the schedule of payments agreed upon between the State and the Third Party.
- 3.3.3. In the event that the State or the Implementing Authority contracted a Third Party to execute a Change to the Project, and the Concessionaire was required by the Implementing Authority to supervise and manage such Change, the Third Party will be subject to the relevant supervision and management instructions of the Concessionaire. The Implementing Authority will employ reasonable efforts to assist the Concessionaire and the Third Party to contractually resolve all expected interactions between them during the implementation stage of the Change. Without derogating from the aforesaid, any agreement between the Concessionaire and Third Party shall be subject to the prior Approval of the Implementing Authority.

4. CHANGES REQUESTED BY THE CONCESSIONAIRE

4.1. Request for Change Order

In the event that the Concessionaire is interested in a Change, including to the Design and Construction Requirements or Project Specifications, or to the Operation or Maintenance of the Project, it may request the Implementing Authority to issue a Change Order.

Any request for a Change Order submitted by the Concessionaire to the Implementing Authority will be submitted at least sixty (60) days prior to the anticipated date of its introduction, and shall specify all the information detailed in section 2.3 (*Concessionaire's Response*) ("**Request for a Change Order**").

4.2. Consultation and Additional Information

The provisions of sections 2.4 (*Consultation*) and 2.5 (*The Implementing Authority's Response to the Concessionaire's Response*) shall apply.

4.3. Approval by the State

4.3.1. Approval by the State

A Request for a Change Order will not become effective until Approved in writing by the Implementing Authority and issued as a Change Order.

Each Change Order shall be considered to be unique to the particular site and circumstances referred to and shall not entitle the Concessionaire to adopt the Change in other sites or circumstances.

The Implementing Authority may:

4.3.1.1. Approve the Request for Change Order and issue a Change Order with or without modifications from the Request for Change Order;

or;

4.3.1.2. stipulate its Approval of a Request for Change Order, upon any condition it deems required, including determination that the costs of implementing such Request for Change Order will not be deemed to constitute part of the Balance of the Senior Debt;

or;

4.3.1.3. refuse the implementation of the Change Order or any part thereof, if the Implementing Authority is of the opinion that the implementation of the Request for Change Order might adversely affect compliance of the Concessionaire with its obligations pursuant to this Concession Agreement, or cause the Project not to comply or not to meet any of the requirements of this Concession Agreement, or adversely affect the public interest.

4.3.2. Implementation Schedule

If the State decides to approve the Request for Change Order, the Concessionaire and the State shall use their best efforts to agree upon the additional time allowable to the Concessionaire for the implementation of the Change Order (to the extent required).

4.3.3. No Remedies to the Concessionaire

For the avoidance of doubt, without derogating from the generality of the provisions of section 2.17.1 (*Exclusions*), it is hereby emphasized that the Concessionaire shall not be entitled to any time extension (unless such is approved in accordance with the provisions of

Section 4.3.2 (*Implementation Schedule*) above, nor will the Concessionaire be entitled to recover any costs or expenses and shall have no claim against the State or the Implementing Authority following the issuance of a Change Order pursuant to the Concessionaire's Request for Change Order.

4.4. A Request for Change Order which Results in Savings

In the event that a Request for Change Order is expected to result in cost Savings, the cost Savings shall be determined prior to the starting date of the implementation of the Change Order, and shall be final and conclusive and shall not be subject to any further changes, negotiations or updates.

Without derogating from the generality of the provisions of this Section 4 (*Changes Requested by the Concessionaire*), if a Request for a Change Order shall result in Savings, the State shall assume 70% of such Savings, in accordance with the provisions of section 2.14 (*Reduction from the Project*).

The provisions of section 3 (*General Provisions Relating to Change Orders*) shall apply with respect to any Change Order resulting from a Request for Change Order, initiated by the Concessionaire.

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